

STATE OF MONTANA COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES	REF: TRAN-1
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PROGRAM/SUBJECT: Gasoline Tax Apportionment	

FEDERAL GRANTOR AGENCY: Not Applicable

TYPES OF RECIPIENTS: Counties, cities and towns, and consolidated city-county governments

SOURCE OF AUTHORIZATION AND REGULATIONS: Section 15-70-101, MCA

INFORMATION CONTACT: Montana Department of Transportation (MDT)
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I. PROGRAM OBJECTIVES:

The State distributes a portion of the gasoline taxes collected by the State to counties, cities and towns, and consolidated city-county governments for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys. (Section 15-70-101, MCA)

II. PROGRAM PROCEDURES:

The funds are distributed monthly by MDT to counties, cities and towns, and consolidated city-county governments. The total amount to be distributed annually is specified in Section 15-70-101, MCA. The method of allocation to the various counties, cities and towns, and consolidated city-county governments is specified in that same section, and is based on road mileage, population, and land area.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

1. Compliance Requirement:

- All funds allocated to counties, cities, and towns, and consolidated city-county governments must be used for the following:
 - construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys, or
 - for the share that the city, town, county, or consolidated city-county governments might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems.
- (Section 15-70-101(4), MCA)

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

1. Compliance Requirement - continued:

(**Note:** A.G.O. 19, Volume 40, indicates that a city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city streets. MDT has detailed plans which specify where storm drainages end and other potential utility services begin. If there are indications that the local government may be using its gas tax allocation for other than allowable costs discussed above, please contact the MDT information contact on page one for clarification.)

Suggested Audit Procedure:

- Test disbursements of gasoline tax moneys to determine if the funds were used only for the purposes described above. (**Note:** State law does not specify a fund in which gasoline tax moneys should be deposited, although the expenditure restrictions require that the local government document the appropriate expenditure of these moneys. BARS Special Revenue Funds No. 2820 (Gas Apportionment Tax) or No. 2110 (County Road) should be used.)

2. Compliance Requirement:

- Gasoline tax moneys may not be used for capital expenditures, except that towns and third-class cities, as defined in Section 7-1-4111, MCA, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of the town's or city's streets and alleys. (Section 15-70-101(4) & (8), MCA)

Suggested Audit Procedures:

- Test expenditures in counties, first and second class cities, and consolidated governments to determine that no gasoline tax moneys were used for the purchase of capital equipment.
- Test expenditures in third-class cities and towns to determine that not more than 25% of the funds allocated to the city or town were used for the purchase of capital equipment and supplies to be used for the maintenance and repair of streets and alleys.

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

3. Compliance Requirement:

- If a contract for maintenance, construction, reconstruction, or repair of roads, streets or alleys is in excess of \$25,000 and is to be paid with gasoline tax moneys, the contract must be awarded to the lowest responsible bidder according to applicable bidding procedures. (Section 15-70-101(5), MCA)

(Note: This provision means either that all work above \$25,000 must be contracted out by bid, or that the local government may do the work itself or contract it out by bid. The court construed the provision to mean the latter. Numerous other statutes relating to construction and repair of roads authorize the local government to do the work itself. It would not be reasonable to assume that only construction and repair funded by gas tax dollars must be contracted out. Attempts to require this by legislation in 1979 and 1985 failed, and the failure is significant. Finally, the entities administering that provision have for 12 years interpreted it to mean that a local government may do the work itself and must follow the provision only if the work is contracted out. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 M 392, 715 P2d 1056, 43 St. Rep. 470 (1986).)

Suggested Audit Procedures:

- If a contract for maintenance, construction, reconstruction or repair of roads, streets, or alleys is in excess of \$25,000 and is paid with gasoline tax moneys, review bidding procedures and determine that funds were disbursed to the lowest bidder according to applicable bidding procedures.
- Obtain the total cost for selected projects to determine if proper bidding procedures were followed for projects that are in excess of \$25,000, and that the above bidding requirement was not circumvented by dividing single projects costing in excess of \$25,000 into smaller projects costing less than that amount.